Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Truth-in-Billing and	)	CC Docket No. 98-170
Billing Format	)	
	)	
National Association of State	)	CC Docket No. 04-208
Utility Consumer Advocates' Petition	)	
For Declaratory Ruling Regarding	)	
Truth-in-Billing	)	
	)	

COMMENTS OF MCI, INC.

June 24, 2005

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INTRODUCTION

In its *Second Truth-in-Billing Order*, released March 18, 2005, the Federal Communications Commission ("FCC" or the "Commission") reaffirmed its longstanding commitment to creating a network of broad but flexible truth-in-billing principles "rather than mandat[ing] detailed rules that would rigidly govern the details or format of carrier billing practices."[1] Despite its stated philosophy, however, the Commission is now tempted to reach out and impose precisely the types of rigid and burdensome rules it professes to oppose. The record before the Commission simply does not support the intrusive and costly regulations the Commission is considering. In addition to the financial burdens these regulations would impose on carriers, the proposed rules raise serious First Amendment concerns. The Commission should resist the urge to micromanage carriers' billing practices, and should reject the rules it is considering.

As a threshold matter, this Commission should reconsider and abandon its tentative decision to require carriers to place government-mandated charges in a separate section of customer bills from non-mandated charges. This proposed requirement would cost carriers, including MCI, Inc. ("MCI"), millions of dollars to implement, and would threaten carriers' freedom of commercial speech, without providing any corresponding benefit to consumers. The costs would be exacerbated if the Commission decides to limit the definition of "government-mandated" charges to only those taxes, fees, and surcharges that carriers are required to collect from consumers and directly remit to the government.

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[1] *In the Matter of Truth-in-Billing and Billing Format, National Assoc. of State Utility Consumer Advocates' Pet. for Declaratory Ruling Regarding Truth-in-Billing, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, CC Docket No. 98-170, CG Docket No. 04-208 (rel. March 18, 2005) ("*Second Truth-in-Billing Order*" or "*Second Truth-in-Billing Further Notice*").

The Commission should also refrain from imposing one-size-fits-all labels on line item charges and rigid limits on a carrier's ability to combine charges in a single line item. Given the important First Amendment implications of standardized labeling, as well as the wide variations in carriers' cost recovery structures, the Commission should adhere to its wise and effective reasonable regulatory approach in this area.

MCI also disagrees with the Commission's proposal to require carriers to provide overly detailed information about potentially applicable taxes, fees, and surcharges prior to a consumer's signing up for service with a carrier. There is simply no benefit to overwhelming consumers with a morass of detailed billing information, and indeed providing such information may not be feasible. Even if it were feasible, the practice may generate more annoyance than appreciation from customers who would be required to listen while the sales representative listed every possible tax, fee, or surcharge that could apply.

Finally, the Commission should make clear that its truth-in-billing regulations preempt state regulations that are inconsistent with its rules, particularly state laws that impose additional, burdensome requirements on carriers. In a nationwide market, it is expensive and inefficient for carriers to provide widely different billing formats, point-of-sale disclosures, and labels of line item charges to comply with a patchwork of constantly evolving state regulations.

Recently, the California Public Utilities Commission ("California PUC") stayed its earlier decision to impose on carriers a series of very detailed regulations similar to those this Commission is now considering. *See Decision 05-01-058, Order Modifying Decision 04-05-057*, Rulemaking 00-02-004 (Cal. Pub. Util. Comm'n, Jan. 27, 2005). The California PUC recognized that carriers were experiencing severe difficulties implementing the rules. That Commission also recognized that viable consumer protection occurs only with "a structure that can be reasonably implemented, adequately enforced, and remain viable given today's rapidly changing telecommunication technologies and industry structure." *Id*. at 1.

This Commission should learn from the California PUC's experience. If the Commission wants to maximize low-cost opportunities for consumers, it should lighten, rather than increase, the regulatory burdens on carriers

I. THE COMMISSION SHOULD NOT REQUIRE CARRIERS TO SEGREGATE GOVERNMENT-MANDATED FROM NON-MANDATED CHARGES.

In the *Second Truth in Billing Order*, the Commission "tentatively conclude[d]" that carriers using line-item billing must place government-mandated charges "in a section of the bill separate from all other charges."[2] The Commission should abandon its tentative decision. The rigid formatting requirement it is considering would impose massive and unnecessary costs on carriers, while providing negligible, if any, benefit to consumers.

The burdens on carriers of this proposed regulation are real and considerable. MCI estimates that it would require at least twelve to eighteen months—if not longer—to develop specifications for the proposed format, write code, test it for accuracy, and implement the nationwide system. In addition, MCI would be required to perform perform extensive research into federal, state, and local taxes, fees, and surcharges in order to determine in which portion of a bill a certain charge should appear. The extent of the required research—and corresponding cost—is dependent on the definition of "government-mandated." Specifically, it would be significantly more expensive if the definition did not encompass all taxes, fees, and surcharges that carriers are permitted to impose related to a government program or initiative, such as fees to recover federal universal service support costs and number portability costs.[3] As with federal

[2] *Second Truth-in-Billing Order* ¶ 39.
[3] Defining government-mandated charges to include fees related to a government program is consistent with the Commission's goal of encouraging carriers to provide accurate, clear and

governmental costs, certain state and local taxes, fees, and and surcharges are *required* to be charged to consumers, while others *permitted* to be passed on to consumers.

MCI estimates that it would cost approximately $5.3 million to implement these changes to its complex billing system. This estimate does not even include the additional costs of marketing the new billing format and training customer service representatives to answer questions about that format. Moreover, if the Commission does not preempt state regulations that might impose additional formatting requirements, carriers could be forced to break their bills into multiple sections that vary by state, which would immensely increase the cost.

Despite its enormous cost, the proposed regulation would provide little, if any, benefit to consumers. The Commission's tentative conclusion to impose this formatting requirement appears to be based on a concern that some carriers may be attempting to portray unrelated rate increases as "regulatory" costs, thus misleading consumers into believing that certain routine operating costs are government-mandated fees.[4] The record before the Commission hardly justifies such a costly and intrusive regulatory response. In any event, the proposed regulation is superfluous: Deceptive or misleading billing practices are already prohibited.

Enforceable truth-in-billing principles promulgated by the Commission in the *First Truth-in-Billing Order* require that "bills contain full and non-misleading descriptions of charges that appear therein," and that "bills contain clear and conspicuous disclosure of any information

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well-organized billing information. The universal service fee, which reflects the amount a carrier must contribute to the universal service fund, is not a profit-motivated charge. The carrier should be allowed to communicate this relevant fact to its customers by including that charge in the section of the bill devoted to government charges, to better inform those customers about the nature and extent of the carrier's charges. The most efficient way for a carrier to inform a customer that the universal service charge is not a profit-motivated charge, but a form of indirect taxation, is to include that charge in the section of the bill devoted to government charges.

[4] *See Second Truth-in-Billing Order* ¶ 24 & n.65.

the consumer may need to make inquiries about, or contest charges on the bill."[5] And the Commission already prohibits a carrier from mislabeling a charge as mandated by the government. The Commission's *Universal Service Fund Contribution Order*, released in 2002, went even further, expressly prohibiting carriers from including administrative costs in line items that are "characterized as federal universal service contribution recovery charges."[6] The Commission emphatically reasserted that ruling in the *Second Truth-in-Billing Order*. In addition, notwithstanding federal preemption of certain state truth-in-billing laws, states are free to regulate abusive carriers through use of consumer fraud laws.[7] These regulatory tools are more than sufficient to prevent the abusive billing practices cited by some commenters.[8]

Indeed, under the format the Commission proposes to adopt, consumers might be *more easily* persuaded that false charges are valid, and *less* likely to inquire into the basis for those charges, if the charges are included in a segment of the bill that is specifically labeled "government charges." As the Commission itself has observed, "[c]onsumers may be less likely to engage in comparative shopping among service providers if they are led to believe erroneously

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[5] *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492 (1999) ¶ 5

[6] *Federal-State Joint Board On Universal Service*, CC Docket No. 96-45, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated With Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, Telecommunications Services for Individuals With Hearing and Speech Disabilities and the Americans With Disabilities Act of 1990, CC Docket No. 90-571, Administration and Fund Size, CC Docket No. 92-237, Number Resource Optimization, CC Docket No. 99-200, Telephone Number Portability, CC Docket No. 95-116, Truth-in-Billing and Billing Format, CC Docket No. 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24980, ¶ 54 (2002) ("*Universal Service Order*").

[7] *See Second Truth-in-Billing Order* ¶ 34.

[8] The Commission notes commenters' statements that there continue to be consumer complaints and questions about billing in many jurisdictions. *See Second Truth-in-Billing Order* ¶ 24 & n.65. But there is no evidence in the record that the billing format solution proffered by the Commission will lessen the number or type of these complaints.

that certain rates or charges are unavoidable federally mandated amounts from which individual carriers may not deviate."[9] Thus, it is unclear how, if at all, the proposed segregation will, as the Commission hopes, "discourage a carrier from misleading consumers by recovering other operating costs as government-mandated charges."[10]

The proposed rule is inconsistent with the Commission's stated goal of providing carriers maximum flexibility to structure and recover costs "in a manner that best fit[s] their own specific needs"[11] as long as the method each carrier chooses is clear, accurate, and allows consumers to inquire into the basis for all of a carrier's charges. As the Commission has previously observed, "it is in the interest of . . . carriers to inform fully their end user customers of the nature and amount of all charges they assess, including any separate line item charges they choose to impose for universal service and access."[12] Therefore, there is no need for the Commission to adopt this rigid formatting requirement, and the Commission should certainly not impose any additional categories of charges.[13]

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[9] *Second Truth-in-Billing Order* ¶ 27.
[10] *Id.* ¶ 43.
[11] *Id.* ¶ 5.
[12] *In the Matter of Truth-in-Billing and Billing Format, Notice of Proposed Rulemaking*, CC Docket No. 98-170, 13 FCC Rcd 18180 (1998) ¶ 9.
[13] *Second Truth-in-Billing Order* ¶ 44.

II. CARRIERS SHOULD BE ALLOWED TO COMBINE CHARGES IN LINE ITEMS

The Commission should resist the urge to micromanage carriers' billing techniques by prohibiting carriers from combining valid charges in a single line item. There is no need for the Commission to impose a burdensome requirement that carriers separate every charge into a separate line item.

Forcing carriers to break down every cost into a separate line item would be extremely expensive to implement. In addition, if carriers are forced to break down their costs into narrower and narrower line items, eventually a profusion of information will result in lengthy and complex bills that fuel, rather than alleviate, consumer confusion. After all, the most important figure on a consumer's phone bill is the total amount due.[14] In billing, as in everything else, there is such a thing as too much detail. *See, e.g., Cotton v. Buckeye Gas Prods. Co.*, 840 F.2d 935, 938 (D.C. Cir. 1988) (discussing the danger of over-warning on product labels) ("The inclusion of each extra item dilutes the punch of every other item."). Carriers may opt to provide accurate but efficient and simple bills to customers—and those customers, pleased with the clarity and brevity of their bills, as well as their low rates, may be perfectly satisfied with the result.

The Commission is concerned that allowing carriers to combine charges in a single line item will encourage some carriers to "bury costs in lump figures."[15] But preexisting safeguards—including the Commission's recent ruling in the *Second Truth-in-Billing Order*—adequately protect consumers from abusing line items by requiring labels to be clear and accurate, and by prohibiting carriers from mislabeling a charge as federally mandated. In

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[14] *See www.fcc.gov*, Letter from Commissioner Ness addressing Telephone rates and Line Charges, FCC Web site "Ness Forum" (recommending that consumers "keep [their] eyes on the bottom line of the bill").
[15] *Second Truth-in-Billing Order* ¶ 48.

addition, in the highly competitive telecommunications market, carriers that are unable to provide accurate information, low costs, and responsive service to customers will not survive.

The Commission should stop short of prescribing the specific line item charges that carriers can use, and should be wary of over-informing customers by mandating lengthy and unduly complex itemizations.

III. THE COMMISSION SHOULD NOT IMPOSE ONE-SIZE-FITS-ALL LABELING REQUIREMENTS

In the *Truth-in-Billing Order*, the Commission recognized that "[i]n adopting a provider-based guideline and affording wide latitude to determine the most efficient way to convey the service provider information," it was balancing "consumers' need for clear, logical and easily understood charges against concerns that rigid formatting and disclosure requirements would inhibit innovation and greatly increase carrier costs."[16] Despite the wisdom and correctness of this philosophy, however, the Commission continues to consider imposing certain standardized line item labels on carriers.[17] The Commission should resist this temptation.

Carriers are constantly modifying and expanding the services and features they provide to new and longstanding customers. Therefore, even assuming that the Commission could impose a competitively neutral labeling requirement that fit all carriers today (it cannot), that label might by rendered obsolete by changes in a carrier's cost-recovery structure within just a few months. In addition, carriers are increasingly providing billing information to customers on Websites. Any proposed labeling requirements will stifle carriers' creativity in designing and updating their Web information. The Commission should not attempt to fit the multitude of carrier cost-structures into a single, uniform labeling structure, and it should not attempt to impose a rigid requirement that may be outstripped by market-driven or technological developments in billing.

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[16] *Id.* ¶ 36.
[17] *Id.* ¶¶ 43-47.

IV. THE REQUIREMENTS THE COMMISSION IS CONSIDERING RAISE SERIOUS FIRST AMENDMENT CONCERNS.

As this Commission has recognized, corporations enjoy considerable freedom of commercial speech. The government may only regulate lawful, non-misleading commercial speech if it can demonstrate a substantial state interest in regulating the speech, that the regulation directly advances the governmental interest, and that the regulation is as narrowly tailored as possible to serve that interest. *See Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980); *see also Riley v. Nat'l Fed. of the Blind*, 487 U.S. 781, 800 (1988) ("[T]he First Amendment direct[s] that government not dictate the content of speech absent compelling necessity, and then, only by means precisely tailored"). Those First Amendment protections undoubtedly extend to companies' billing correspondences. *See Pac. Gas & Elec. Co. v. Pub. Util. Comm'n*, 475 U.S. 1 (1986) (striking down an order requiring Pacific Gas to include competitors' messages in its billing envelopes).

It is unlikely that the Commission's desire to impose standardized billing labels and billing formats qualifies as a substantial state interest for First Amendment purposes. While the government certainly has an interest in consumers being accurately billed for valid charges, preexisting rules promulgated by the Commission in its *First and Second Truth-in-Billing Orders* expressly address that problem by requiring carriers to provide accurate and clearly organized billing information in plain language. The Commission's desire for standardized billing serves a less vital goal of purportedly enhancing the ability of consumers to comparison shop by forcing carriers to list charges in a one-size-fits-all manner. Without evidence that the line item labels carriers choose are in fact misleading and harmful to consumers, a mere preference for an alternative billing format is not a substantial interest justifying a restriction on carriers' speech.

Moreover, for the reasons described above, there is no evidence that rigid labeling and formatting requirements will advance the government interest in promoting consumer comparison shopping. Because carriers are differently situated in this complex market, they structure and recover their costs in different ways. The imposition of a single set of labels for charges that operate quite differently as to individual carriers might foster, rather than alleviate, consumer confusion. In addition, in comparison shopping, consumers will rightly focus first and last on the most important factor for each consumer: the bottom line cost of his or her monthly bill. The Commission's narrow focus on labeling and categorization of charges in bills overlooks that fundamental point.

Finally, the Commission's proposed labeling and formatting requirements are redundant, and thus not narrowly tailored to serve its interest in promoting increased transparency in customer billing, because preexisting Commission rules adequately require carriers to provide accurate, clearly organized and easily comprehensible telephone bills. As the Supreme Court has held, "regulatory technique may extend only as far as the interest it serves" and thus does not pass muster "when narrower restrictions on expression would serve its interests as well." *Central Hudson*, 447 U.S. at 566. That maxim applies squarely here. The government bears a heavy burden where, as under the proposed restriction, it suppresses truthful, non-misleading information, and mere speculation cannot support a characterization of speech as "potentially misleading":

> If the protections afforded commercial speech are to retain their force, we cannot allow rote invocation of the words 'potentially misleading' to supplant the [government's] burden to demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.

Ibanez v. Fla. Dep't of Bus. and Prof'l Regulation, 512 U.S. 136, 146 (1994) (citations and quotations omitted).

The proposed labeling and formatting requirements restricting carriers' commercial speech likely do not pass constitutional muster. Therefore, the Commission should not impose these rigid requirements.

V. THE COMMISSION SHOULD NOT REQUIRE CARRIERS TO PROVIDE DETAILED INFORMATION ABOUT TAXES , FEES AND SURCHARGES AT THE POINT OF SALE.

The Commission should not require carriers to overwhelm customers with detailed estimations of all possible taxes, fees, and surcharges at the point of sale.[18] While the Commission's goal of informing consumers is laudable, there is no evidence that the proposed mandatory disclosure requirements will result in consumers making better informed decisions. In fact, this requirement might simply result in consumers being annoyed by having to listen to a litany of information they did not request.

MCI's current practice is to inform all customers at the point of sale that taxes, fees, and surcharges will apply to their selected services, and to respond to consumer questions about those charges. MCI also provides detailed information about all aspects of consumers' bills on its Website. MCI believes that its current practice strikes the proper balance between informing consumers accurately of the costs associated with their chosen services, and drowning those consumers in a sea of facts. After all, carriers, including MCI, would be punished in the marketplace if consumers were surprised by the surcharges—or any other aspect of their fee—or found them unreasonable. The Commission's proposed disclosure requirements are unnecessary, and are likely generate annoyance among consumers.

If the Commission decides to impose a point-of-sale disclosure requirement, it should refrain from placing arbitrary percentage or monetary limits on what constitutes a "reasonable"

[18] *Id.* ¶ 55.

estimated range of consumer surcharges.[19] The calculation of taxes and surcharges for particular customers is not a precise science. In order to estimate precisely a customer's surcharges, a carrier might be forced to inquire into a consumer's probable future calling patterns in lengthy and intrusive detail. As long as a customer has enough information to make inquiries into the details of potential surcharges, there is nothing misleading about stating a range of possible additional costs.

VI. THE COMMISSION SHOULD PREEMPT STATE TRUTH-IN-BILLING LAWS THAT IMPOSE A PATCHWORK OF LABELING AND DISCLOSURE REQUIREMENTS ON CARRIERS.

The Commission should expressly preempt state laws that impose different or additional truth-in-billing requirements on carriers. Thereby the Commission will provide uniformity and certainty in this important area of consumer protection and save carriers—and ultimately consumers—significant costs. As previous commenters have noted,[20] the Commission has authority to preempt state truth-in-billing regulation under sections 201(b) and 205(a) of the Act, which give the Commission authority to prescribe just and reasonable rates. 47 U.S.C. §§ 201(b), 205(a). In addition, the Commission should affirm that section 64.2400(c) of its truth-in-billing rules preempts all state requirements that are more stringent than or otherwise conflict with the national rules. 47 C.F.R. § 64.2400(c).

Compliance with a patchwork of state disclosure requirements requires constant re-programming of billing software and re-training of employees. Moreover, if the Commission

[19] To the extent that allowing carriers to provide a reasonable range of estimated surcharges at the point of sale conflicts with the settlement agreements between the Attorneys General from 32 states and Verizon Wireless, Cingular Wireless, and Spring PCS, the contents of the settlement agreement should not trump this Commission's regulatory decisionmaking expertise. MCI and many other parties were not parties to the settlement agreements, and should not be subject to their terms. As the Commission correctly suggests, and as discussed further below, federal regulation in the important field of truth-in-billing can and should preempt inconsistent state laws, including state law settlements.

[20] *Second Truth-in-Billing Order* ¶ 50.

were to require consumer telephone bills to segregate government charges from non-government charges, states laws might require additional sub-categorization, imposing significant additional costs on carriers.

In addition to the logistical and cost burdens of complying with varying state truth-in-billing laws, it is increasingly difficult to determine in which state a customer is located for purposes of complying with those laws. A customer's location could be defined by, for example, its physical address, its service installation address (which might be an MCI terminal), the billing address of a sub-account, the billing address of a corporate account, or an alternate invoice delivery address. Further complicating matters, most business customers are multisite. If formatting requirements differ by state, it is totally unclear which state's requirements should apply. As the Commission has observed, "limiting state regulation of . . . interstate carriers' billing practices, in favor of a uniform, nationwide federal regime, will eliminate the inconsistent state regulation that is spreading across the country, making nationwide service more expensive for carriers to provide and raising the cost of service to consumers."[21]

CONCLUSION

The half-decade following the *Truth-in-Billing Order* has proven the wisdom of the Commission's initial instinct that flexibility, rather than costly uniformity, encourages telecommunications innovation and ultimately drives down consumer costs. In the past six years, the range of technologies and services from which customers can choose has literally exploded. Hundreds of competitors have entered the market of telecommunications carriers, offering services over cable, satellite, wirelines, and the Internet. And, as the Commission accurately predicted, the manner in which this multitude of carriers structures and recoups their

[21] *Id.* ¶ 52.

costs is as varied as the technologies they use and the customer bases they serve. Yet this complex marketplace provides more services at less cost to consumers than ever before. Thus, the Commission should refrain from micromanaging carriers' billing practices, and instead reaffirm its determination to regulate truth-in-billing with a light but effective touch—ensuring accuracy for the consumer without imposing unnecessary, unhelpful, and costly burdens on consumers.

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Respectfully submitted,

/s/

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